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June 9, 2005

Via HAND DELIVERY

Hon. Vernon A. Williams
Secretary
Surface Transportation Board
1925 K Street, N.W.
Washington, DC 20423

Re: ***AEP Texas North Company v. BNSF Railway Company,***
STB Docket No. 41191 (Sub-No.1)

Dear Secretary Williams:

Enclosed for filing in the above-captioned matter are the original and 15 copies of the Final Brief of Defendant BNSF Railway Company. We have also enclosed three (3) CDs containing a copy of the filing in Word format and one additional CD containing a copy in PDF format.

Please date stamp the extra copy of this cover letter and return it to the messenger who delivered this filing.

Sincerely,



Anthony J. LaRocca

Enclosures:

cc: Counsel for Complainant



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SURFACE TRANSPORTATION BOARD

STB Docket No. 41191 (Sub-No. 1)

**AEP TEXAS NORTH COMPANY
v.
BNSF RAILWAY COMPANY**

**Final Brief of
BNSF Railway Company**

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June 9, 2005

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Table of Abbreviations

AEP Texas	AEP Texas North Company
BNSF	BNSF Railway Company
DARA	Density Adjusted Revenue Allocation
DCF	Discounted Cash Flow
EIA	Energy Information Administration
GPRM	Generalized Percentage Reduction Methodology
ICC	Interstate Commerce Commission
MGT	Million Gross Ton
MOW	Maintenance of Way
MSP	Modified Straight-Mileage Prorate
PRB	Powder River Basin
RCAF	Rail Cost Adjusted Factor
RCAF-U	Rail Cost Adjusted Factor-unadjusted for changes in productivity
ROW	Right of Way
RTC	Rail Traffic Control
R/VC	Revenue-to-Variable Cost
SAC	Stand-Alone Cost
SARR	Stand-Alone Railroad
TNR	Texas & Northern Railroad
UP	Union Pacific
URCS	Uniform Rail Costing System

Pleadings

Motion to Dismiss	BNSF's Motion to Dismiss, STB Docket No. 41191(Sub-No. 1) (filed May 18, 2005)
Motion to Strike	BNSF's Motion to Strike, STB Docket No. 41191(Sub-No. 1) (filed Sept. 9, 2004)
Opp. to Compl. Unauthorized Reply to a Reply	BNSF's Opposition to Complainant's Unauthorized Reply to a Reply, STB Docket No. 41191(Sub-No. 1) (filed Mar. 10, 2005)
Opp. to Pet. to Supp. Rec.	BNSF's Opposition to Complainant's Petition to Supplement the Record, STB Docket No. 41191(Sub-No. 1) (filed Nov. 24, 2004)
Resp. to Compl. Post-Reb. RTC Analysis	BNSF's Response to Complaint's Post-Rebuttal RTC Analysis, STB Docket No. 41191(Sub-No. 1) (filed Feb. 14, 2005)

ICC or STB Proceedings

<i>1996 Decision</i>	<i>West Texas Utilities Co. v. Burlington Northern R.R. Co.</i> , 1 STB 636 (served May 3, 1996)
<i>APS v. BNSF</i>	<i>Arizona Public Service Co. v. The Burlington Northern and Santa Fe Ry.</i> , STB Docket No. 41185 (served May 12, 2003)
<i>April 8, 2005 Decision</i>	<i>Burlington Northern and Santa Fe Ry. Co. v. Surface Transportation Board</i> , 403 F.3d 771 (D.C. Cir. 2005)
<i>Duke/CSX</i>	<i>Duke Energy Corp. v. CSX Transportation, Inc.</i> , STB Docket No. 42070 (served Feb. 4, 2004)
<i>Duke/NS</i>	<i>Duke Energy Corp. v. Norfolk Southern Ry. Co.</i> , STB Docket No. 42069 (served Nov. 6, 2003)
<i>Guidelines</i>	<i>Coal Rate Guidelines: Nationwide</i> , 1 I.C.C.2d 520 (1985)
<i>March 2004 Decision II</i>	<i>AEP Texas North Co. v. The Burlington Northern and Santa Fe Ry. Co.</i> , STB Docket No. 41191 (Sub-No. 1) (served Mar. 19, 2004) (granting AEP Texas' Motion to Vacate)
<i>OPPD</i>	<i>Omaha Power Dist. v. Burlington Northern R.R.</i> , 3 I.C.C.2d 853 (1987)

<i>PPL</i>	<i>PPL Montana, LLC v. The Burlington Northern and Santa Fe Ry. Co.</i> , STB Docket No. 42054 (served Aug. 20, 2002)
<i>PPL II</i>	<i>PPL Montana, LLC v. The Burlington Northern and Santa Fe Ry. Co.</i> , STB Docket No. 42054 (served Mar. 21, 2003)
<i>September 2004 TMPA Decision</i>	<i>Texas Municipal Power Agency v. The Burlington Northern and Santa Fe Ry. Co.</i> , STB Docket No. 42056 (served Sept. 27, 2004)
<i>TMPA</i>	<i>Texas Municipal Power Agency v. The Burlington Northern and Santa Fe Ry. Co.</i> , STB Docket No. 42056 (served Mar. 24, 2003)
<i>Xcel I</i>	<i>Public Service Co. of Col. d/b/a Xcel Energy v. The Burlington Northern and Santa Fe Ry. Co.</i> , STB Docket No. 42057 (served Jun. 8, 2004)
<i>Xcel III</i>	<i>Public Service Co. of Col. d/b/a Xcel Energy v. The Burlington Northern and Santa Fe Ry. Co.</i> , STB Docket No. 42057 (served Jan. 19, 2005)

This is the Final Brief of defendant BNSF Railway Company, filed pursuant to the Board's April 22, 2005 order in this proceeding.

In 1996, the Board ordered BNSF to reduce its rates for transportation of PRB coal to the Oklaunion Station by almost 30 percent. BNSF vigorously opposed that rate reduction, but it has never charged a rate for that transportation since 1996 that exceeds the rates determined by the Board in its SAC calculations to be reasonable. AEP Texas now asks that BNSF's rates be reduced by an *additional* 30 percent and that the reduced rates apply back to November 2000.

Nothing has happened since 1996 that would justify a reduction in the rates that the Board prescribed as maximum reasonable rates. AEP Texas submitted no evidence showing that the Board's original SAC calculations were flawed or that they have become obsolete with the passage of time. Instead, AEP Texas bases its claim for another round of rate reductions almost entirely on two gaming strategies that have emerged in recent SAC cases -- the inclusion of massive volumes of cross-over traffic in the SAC analysis and the rerouting of cross-over traffic. BNSF has urged the Board repeatedly to rein in complainants' use of these evidentiary ploys because of the risk that SAC results will be distorted. The Board now has proof of the pernicious effect of these gaming strategies: rates that were determined to be reasonable in the Board's 1996 SAC analysis can be made to appear unreasonable based on the manipulation of cross-over traffic.

AEP Texas should have a high burden of showing that rates once determined to be reasonable are now unreasonable. It has not made such a showing. AEP Texas has benefited from low rates for 10 years under the existing rate prescription and it benefited from the delay in correcting the Board's error in the 1996 decision requiring that BNSF charge rates even lower than the SAC maximum rates. Its complaint should be dismissed.

I. THRESHOLD LEGAL ISSUES

A. The Complaint Is Invalid As Long As The 1996 Rate Prescription Is In Place

On May 18, 2005, BNSF filed a motion to dismiss the complaint in light of the April 8, 2005 D.C. Circuit decision in *BNSF v. STB* (403 F.3d 771), which had the effect of reinstating the 1996 rate prescription. As BNSF explains in its Motion to Dismiss, the reinstatement of the rate prescription requires dismissal of the complaint in this proceeding for two basic reasons.

First, the Board has repeatedly stated that a complaint cannot be brought challenging rates for movements that are already covered by a rate prescription. *See APS v. BNSF*, at 5 n.7 (served May 12, 2003). The reinstated rate prescription expressly covers rates for movements from the Rawhide mine and, by operation of law under the Board's *September 2004 TMPA Decision*, it also covers the rates for current and prospective non-Rawhide movements.

Second, the complaint should be dismissed as to historical movements from non-Rawhide origins because the Board's 1996 SAC calculations already identified the maximum reasonable rates for those movements and BNSF has never charged a rate exceeding those maximum reasonable rates. The 1996 SAC case involved the same parties that are involved in this case. The SAC analysis period in the 1996 case covers all of the historic time periods at issue here. The same transportation services are at issue in both cases. As the D.C. Circuit stated in its April 8, 2005 decision, "[W]hen a matter has been once fully considered and decided it must be regarded as settled unless it appears from new facts presented that the Commission was wrong." *BNSF v. STB*, 403 F.3d at 778 (quoting *Traugott Schmidt & Sons v. Michigan Central Railroad Co.*, 23 I.C.C. 684 (1912)). AEP Texas has submitted no facts that would justify a relitigation of the SAC issues that were settled by the Board's 1996 SAC findings.

B. AEP Texas Should Not Be Permitted To Flout The Board's Authority By Refusing To Pay The Challenged Rates While The Complaint Is Pending

On September 2, 2003, BNSF moved to dismiss AEP Texas' complaint, noting that AEP Texas had unilaterally decided to pay BNSF a lower rate than the rate AEP Texas purported to challenge in its complaint. On March 19, 2004, the Board issued a decision in which it declared that "BNSF is correct that AEP Texas must pay the existing legally established common carrier rate in full." *March 2004 Decision II* at 3. However, the Board declined to dismiss the complaint noting that the statute gave it authority to review the reasonableness of "a rate charged or collected by a rail carrier...." *Id.* (citing 49 U.S.C. §10704(a)(1)) (emphasis added).

Notwithstanding the Board's express statement that "AEP Texas must pay the legally established common carrier rate in full," AEP Texas continued after March 2004 to refuse to pay the legally established rate on non-Rawhide movements. AEP Texas' persistent defiance of the Board on this issue is a direct challenge to the Board's authority over rate reasonableness litigation. The Board has the authority to take actions to preserve the integrity of the statutory scheme and it should do so here.¹ The Board should give teeth to the statutory requirement that a shipper must pay the rates charged by the defendant while the case is pending by assessing its jurisdiction by reference to the R/VC ratios based on the rates *collected*. See BNSF Op. Nar. at I-18. BNSF's evidence shows that the R/VC ratios on all movements at issue in this case are significantly below the jurisdictional threshold at the level of *collected* rates.²

¹ See *R.R. Ventures, Inc. -- Abandonment Exemption*, STB Fin. Docket No. 33385, (Oct. 3, 2000), *aff'd R.R. Ventures, Inc. v. STB*, 299 F.3d 523 (6th Cir. 2002) ("It is well settled that administrative agencies have inherent authority to protect the integrity of the regulatory processes that they are charged with administering, and to prevent or remedy a misuse of those processes").

² See BNSF Reb. Nar. at I-36. Even if the Board assesses its jurisdiction based on the rates that BNSF *charged* but AEP Texas refused to pay, the Board should find that it lacks jurisdiction because those rates have never exceeded of 180 percent of variable costs. See BNSF

C. The Board Has No Authority To Address AEP Texas' Claims As They Relate To Movements That Occurred More Than Two Years Before The Complaint Was Filed

There is no ambiguity in 49 U.S.C. § 11705(c), which sets out a two-year statute of limitations on rate reasonableness challenges. Nevertheless, AEP Texas claims that the Board can ignore the statute and reach back to address the reasonableness of rates on movements occurring more than two years before AEP Texas' complaint. Simply put, its argument is that the statute is not a "jurisdictional" limit on the Board's authority and therefore the Board is free to ignore it under the doctrine of "equitable tolling." *See* AEP Texas Reb. Nar. at I-38 to 46. There are two basic flaws in AEP Texas' position.

First, there is a long and unbroken line of Supreme Court cases expressly finding that Section 11705(c) is a jurisdictional limitation on the Board's authority that cannot be tolled. BNSF Reply Nar. at I-40 to 44. AEP Texas acknowledges these cases, but argues that they are based on statutory language that does not currently exist. Specifically, AEP Texas claims that the old statute contains the phrase "and not after," which was so emphatic that it indicated Congress' intent to make the old statute jurisdictional. AEP Texas points out that Section 11705(c) does not contain that phrase. AEP Texas Reb. Nar. at I-41 to 42. The problem with this argument is that the phrase "and not after" was removed during the technical reorganization of the statute that took place in 1978. Congress expressly stated that no substantive change was intended by the amendments. *See* H.R. Rep. 95-1395, at 8, *reprinted in* 1978 U.S.C.C.A.N. 3009.

Reb. Nar. at I-37. The single most important issue in assessing variable costs in this case involves the proper treatment of road property costs. BNSF presented a detailed summary of that issue in its Reb. Nar. at I-3 to 33. This is an issue of on-going controversy, and BNSF urges the Board to address the merits of BNSF's position on the proper treatment of road property costs in its decision in this case.

Second, regardless of how one interprets Section 11705(c), the doctrine of “equitable tolling” would not apply here. The tolling of an explicit statute of limitations is an extraordinary remedy that would apply only if there were evidence that the Board affirmatively misled AEP Texas into failing to comply with the statute. BNSF Reply Nar. at I-41 to 44. There was no such conduct here. To the contrary, AEP Texas knew all along that it had the option to challenge the reasonableness of rates back to November 2000 in the context of a reopening of the 1996 rate prescription. It consciously abandoned that option in 2003 because it thought it might be able to obtain better SAC results in the context of a new rate case with new SAC evidence. There are no equitable considerations at all that would justify a tolling of the statute under those circumstances.

II. TRAFFIC AND REVENUE ISSUES

With one major exception, the SARRs at issue here and in the 1996 case are fundamentally the same. The principal difference between the two SARRs is that 87 percent of the traffic group in this case is cross-over traffic while the Board’s 1996 SAC analysis contained *no* cross-over traffic. BNSF Reply Nar. at III.A-16 to 17, 22. The rate reduction that AEP Texas now seeks is the product, almost exclusively, of its manipulation of cross-over traffic, particularly its rerouting of cross-over traffic originating at southern PRB mines onto a longer SARR route through Donkey Creek.

In effect, AEP Texas seeks to create a subsidy from the new cross-over traffic, most of which uses only the SARR’s northern lines, to bring down rates on the issue traffic. BNSF showed that the subsidy from this new cross-over traffic is enormous. As BNSF explained, the addition of the new cross-over traffic had a relatively small impact on the SARR’s capital costs as calculated by AEP Texas -- increasing those costs by about 17 percent in 2000 dollars from the costs calculated in 1996. However, AEP Texas assumes that the new cross-over traffic

increases SARR revenues by nearly 60 percent. *Id.* at III.A-22 to 23. This large excess of incremental revenues over incremental costs from the new cross-over traffic, which is totally unrelated to the rates charged for the issue traffic, is the principal basis on which AEP Texas claims that the issue traffic rates should be reduced.

There is no justification for AEP Texas' use of any cross-over traffic in this case, particularly since its original SAC presentation contained no cross-over traffic. But if the Board allows the use of cross-over traffic, it must address the two most egregious problems with AEP Texas' cross-over traffic assumptions -- its use of an erroneous origin credit in allocating revenues between the SARR and the residual incumbent and the improper rerouting of cross-over traffic over a longer SARR route.

A. AEP Texas Is Not Using Cross-Over Traffic To Simplify SAC Evidence But To Change The SAC Result

In the *Xcel* case, the Board explained that cross-over traffic is acceptable notwithstanding the "imprecision" it introduces because it simplifies the presentation of SAC evidence: "We remain concerned that, without cross-over traffic, captive shippers could lack a practicable means by which to prosecute rate complaints." *Xcel III* at 7. Even if this rationale were valid, it would not justify the use of cross-over traffic here. AEP Texas presented a SAC analysis in the 1996 case that used no cross-over traffic and it nevertheless persuaded the Board to reduce BNSF's rates by 30 percent. There is no reason to use cross-over traffic in this case except to skew the SAC results in complainant's favor.

Indeed, AEP Texas has abandoned even the pretense that its use of cross-over traffic in this case is intended to simplify the presentation of evidence. AEP Texas argues that a complainant *should* be able to use cross-over traffic to produce more favorable SAC results. According to AEP Texas, cross-over traffic is *supposed* to allow a SARR to take advantage of

“economies of density” without having to account for off-line costs that are needed to make those economies of density possible. *See* AEP Texas. Reb. Nar. at III-A-12. The ICC has expressly rejected AEP Texas’ position. *See OPPD* at 141-144. The Board allows a complainant to get away with not building a far-flung delivery network because of the difficulty in presenting SAC evidence relating to the entire network of lines required to provide service to the SARR shippers, not because the high costs associated with BNSF’s far-flung delivery network *should be* borne entirely by the incumbent.³ Indeed, the Board has made it clear that if the higher costs associated with off-line portions of a cross-over movement can be reasonably quantified, the Board would allocate more revenue to the residual incumbent to cover those higher costs. *Xcel III* at 8-11.

The Board has not resolved the question of how to allocate revenue on cross-over traffic to reflect relative on-SARR and off-line costs. The Board has not accepted BNSF’s density-based DARA approach. BNSF Reply Nar. at III.A-80 to 89. Until the Board adopts a methodology that provides adequate revenue to the residual incumbent to compensate for the relatively high off-SARR costs resulting from relatively low density on those lines, BNSF does not believe that any cross-over traffic should be included in the SAC analysis. It would be particularly inappropriate to allow the use of cross-over traffic in a case such as this where it is clear that cross-over traffic is not being used to simplify the presentation of evidence.

However, if the Board allows AEP Texas to use cross-over traffic and if the Board continues to use its MSP methodology to allocate revenues on that cross-over traffic, it must

³ It would be anathema to the statutory revenue adequacy policy for the Board to conclude that it does not need to account for the revenue needs of the incumbent’s low density delivery network. BNSF’s ability to achieve revenue adequacy would be seriously impaired if its rates for coal transportation could be reduced even though it does not generate revenues sufficient to cover the costs of its coal delivery network.

address the erroneous use of a 100-mile origin credit, which overcompensates the SARR for the relatively low costs of originating unit coal trains. BNSF Reply Nar. at III.A-76 to 80 and Reply Exh. III.A-10.⁴ These issues are addressed at length in the evidence in this case and in the pending *Otter Tail* proceeding.⁵ In light of the strict page limit on this brief, the revenue allocation issue is not addressed further here.

B. Rerouted Cross-Over Traffic From Southern PRB Mines Must Be Excluded From The SAC Analysis

The most significant abuse of cross-over traffic in this case is AEP Texas' assumption that 28 million tons of cross-over traffic originating at southern PRB mines can be rerouted from the real-world route of movement onto a longer SARR route to Alliance, where the traffic exits the SARR. It therefore shares relatively few facilities with the issue traffic, which moves south from Alliance along the front range of the Rocky Mountains.⁶ AEP Texas should not be allowed

⁴ Revenues for the 20-year DCF period using BNSF's modified origin credit can be determined by referring to column "BL" of BNSF Reply work paper "AEP Coal Move.xls," Tab "Summary." This column contains the revenues by individual Origin/Destination pair, which can be flowed through the revenue forecast work paper "TNR Coal Traf and Rev 0100-0603_BNSF Reply.xls" by changing the formula in column "AF" of tab "SARR traffic summary" to link to the figures in column "BL," rather than those in column "AT." To develop the 20-year revenue stream for the TNR non-coal traffic using BNSF's modified origin credit, the modified MSP figures in rows 25-35 of Tab "2002" in reply work paper "BNSFgrft_BNSF Reply.xls" can be input to the forecast calculations in Tab "2000-2020."

⁵ AEP Texas' response to BNSF's evidence on this issue is virtually identical to the response complainants presented to BNSF's evidence on the origin credit in the *Otter Tail* case. Compare AEP Texas' Reb. Exh. III-A-21 to *Otter Tail*'s Reb. Exh. III-A-13. Since AEP Texas raises no new arguments or evidence that have not already been raised in previous or pending cases, BNSF does not address that exhibit further. See also BNSF's Final Brief in the *Otter Tail* proceeding at 7-9.

⁶ In *PPL II*, the Board stated that "[a] shipper should not seek to have its rate reduced by shifting any part of the costs of the lines or facilities that it needs onto traffic that does not use those lines or facilities." *PPL II* at 7. AEP Texas' rerouting of southern PRB coal traffic is designed to accomplish precisely that improper objective -- reduce the issue traffic rate by assuming that the cost of issue traffic facilities are being paid in part by other traffic that does not use the issue traffic facilities. The rerouted traffic should be excluded for this reason alone. The Board, however, does not have to address this "sharing of facilities" issue here because, as

to game the SAC analysis by using revenues from this traffic to offset the costs to provide service to the issue traffic.

AEP Texas has failed to establish grounds for including the rerouted traffic in the SARR. The Board has established that “[t]he starting point for the Board’s analysis for rerouted traffic will be length of haul.” *Duke/NS* at 18. Further, “for reroutings that would result in a longer overall haul, the rebuttable presumption is that the longer route is less efficient; and the greater the disparity in distance, the stronger that presumption.” *Duke/CSX* at 15. BNSF showed that the reroute adds substantial additional miles to the real-world movement. BNSF Reply Nar. at III.A-25 to 29. AEP Texas has not rebutted the presumption that this longer route is less efficient, and therefore impermissible.

AEP Texas attempted to meet the Board’s relative efficiency test with evidence from its rebuttal RTC model, which purported to show that “for every movement out of the southernmost PRB mines, total movement transit times over the TNR via Edgment would be more favorable than BNSF’s current actual transit times via Guernsey.” AEP Texas Reb. Nar. at III-A-20 to 21. The problem with this claim, as AEP Texas later admitted, was that its rebuttal RTC model (which corrected several errors in its opening RTC model) was itself seriously flawed and unusable for any purpose. As BNSF pointed out in its September 9, 2004 Motion to Strike, in addition to other flaws, AEP Texas’ new rebuttal RTC analysis failed to account for 17 percent of the traffic movements that AEP Texas itself claimed were part of the SARR traffic group, including the Georgia Power traffic. BNSF Motion to Strike at 13-20.

AEP Texas’ admitted failure to support its rerouting of the southern PRB traffic with viable opening or rebuttal evidence should end the inquiry into the propriety of including the

explained below, AEP Texas failed to present operating data that would support the reroute under any circumstances.

rerouted traffic, and it should result in the exclusion of that traffic without further analysis. However, in response to BNSF's Motion to Strike, AEP Texas sought leave to present yet another RTC analysis, arguing that the flaws in its rebuttal RTC analysis were due to purported errors in BNSF's reply evidence. There were no errors in BNSF's reply evidence. *See* BNSF's Opp. to Pet. to Supp. Rec. at 5-8 (Nov. 24, 2004). Moreover, the failure of AEP Texas' rebuttal evidence to account for its entire traffic group should have been obvious to AEP Texas' consultants. *Id.* at 10-11. The Board should not accept AEP Texas' post-rebuttal evidence.

Without deciding whether it would accept AEP Texas' post-rebuttal RTC analysis, the Board, on January 14, 2005, instructed BNSF to respond to the new evidence. BNSF filed a response on February 14, 2005, in which BNSF explained that AEP Texas' post-rebuttal RTC model, like its prior models, contained two fundamental flaws. First, AEP Texas' RTC analysis accounted for only a handful of the outages that actually occurred on the real-world lines replicated by the SARR, thus assuming unrealistic operating conditions for the SARR trains. Resp. to Compl. Post-Reb. RTC Analysis at 5-12 (Feb. 14, 2005); Opp. to Compl. Unauthorized Reply to a Reply (March 10, 2005). Second, the post-rebuttal RTC model improperly assumed that empty SARR trains could freely move to the mines for loading without accounting for the need to share limited capacity at the mines with UP trains. Resp. to Compl. Post-Reb. RTC Analysis at 12-19. When these two modeling errors are corrected, the RTC model cannot run to completion with the traffic group assumed by AEP Texas. *Id.* at 19.

Thus, even if the Board were to accept AEP Texas' post-rebuttal RTC evidence, which it should not, the Board would have to find that AEP Texas has failed to present any evidence that supports the inclusion of the rerouted southern PRB traffic in the SAC analysis. There is no competent evidence rebutting the presumption that the longer route is less efficient for the

rerouted traffic than the real-world route. The rerouted traffic should be excluded from the SAC analysis.⁷

C. Other Traffic issues

The Board must address several other traffic and revenue issues in this case, including two additional issues relating to the manipulation of rerouted traffic.

Georgia Power: AEP Texas rerouted all Georgia Power traffic over the SARR's Donkey Creek route. In the real world, Georgia Power trains move through Guernsey. BNSF Reply Nar. at III.A-34 to 40. The reroute would add to the distance traveled by Georgia Power trains and it would require changes in BNSF's current operations, since BNSF now services those trains in the real world at Guernsey and Lincoln, not Alliance. *Id.* AEP Texas has not presented any evidence rebutting the presumption that the new reroute would be less efficient than the real-world route. Indeed, since AEP Texas' RTC model cannot run to completion with AEP Texas' traffic group, which is supposed to include Georgia Power traffic, AEP Texas has failed to demonstrate that the SARR is capable of handling the Georgia Power traffic under any circumstances.

Coletto Creek: In addition, AEP Texas assumed that the SARR would reroute onto SARR lines certain UP movements to AEP Texas Central's Coletto Creek plant. BNSF Reply Nar. at III.A-40 to 45. AEP Texas claims that it could handle this traffic as a substitute for BNSF under existing trackage rights agreements between UP and BNSF that permit UP to use a portion of BNSF's line that the SARR would replicate. But AEP Texas ignored the explicit provisions in the trackage rights agreements that prohibit the routing that AEP Texas assumes for the Coletto Creek traffic. *Id.* at III.A-42 to 45. No Coletto Creek traffic can be included in the SAC analysis.

⁷ Exclusion of the rerouted traffic goes a long way toward addressing the *PPL* cross-subsidy problem created by including cross-over traffic that uses only the northern SARR lines.

Shawnee: On rebuttal, AEP Texas reassigned traffic originally assumed to move to the TVA's Shawnee plant to two other plants. AEP Texas Reb. Nar. at III-A-35 to 36. In the process of making this reassignment, AEP Texas committed what appears to be an inadvertent error that dramatically overstates SARR revenues.⁸ Even if the Board accepts the reassignment of Shawnee traffic, it must correct AEP Texas' erroneous revenue calculations.

Sunflower: The Board should exclude the traffic destined to a non-existent Sunflower plant, since there are serious and unresolved obstacles to the construction of that plant. *See* BNSF Reply Nar. at III.A-48 to 50.

2003 Traffic Volume: On rebuttal, AEP Texas acknowledged that it had calculated 2003 volumes using procedures that are inconsistent the Board's practice, which is to "derive[] volumes for the first year following an historic period by adjusting the prior year's deliveries according to the defendant carrier's internal forecast." AEP Texas Reb. Nar. at III-A-44. AEP Texas purported to fix this error on rebuttal, but it did not do so. While BNSF's internal forecast projected an overall decline in traffic for 2003, AEP Texas applied that percentage decline only to a subset of the SARR plants. *See* BNSF' Motion to Strike at 11-13. It did not say a single word in support of this departure from the procedure it claimed to be following, apparently hoping that it would avoid scrutiny. Instead, it waited until its reply to BNSF's Motion to Strike to explain why it chose to disregard the internal forecast for 13 plants. The Board cannot accept this untimely evidence. In any event, AEP Texas' explanation does not hold up to scrutiny.⁹

⁸ AEP Texas' reallocation of the Shawnee tons should have resulted in zero revenues for the Shawnee movement. But instead of eliminating the Shawnee revenues, AEP Texas mistakenly included the revenues for the Sherburne plant as Shawnee revenues. *See* AEP Texas electronic workpaper "TNR Coal Revenue Forecast Reb revised.xls," worksheet SAC Rev, row 83, and worksheet BNSF Revenue Forecast, rows 83 and 84.

⁹ AEP Texas claims (based on new evidence) that coal consumption at the 13 plants did not decline. But coal *consumption* does not say anything about PRB coal *deliveries*, particularly

EIA Regional Forecast: On rebuttal, AEP Texas abandoned its original use of the national EIA forecast for PRB coal to project revenue increases upon contract expiration, even though it continued to use the national PRB forecast to project volume increases. Instead, AEP Texas used an unpublished PRB regional forecast from EIA that projected substantially higher revenue growth. In its Motion to Strike, BNSF showed why the regional EIA forecast is unreliable and inappropriate for SAC analyses. Motion to Strike at 6-11. AEP Texas did not address in its reply to BNSF's Motion to Strike any of the substantive issues raised by BNSF regarding the infirmity of the regional EIA forecast.

Issue Traffic Rate: AEP Texas claims that the Board can assume that there will be no escalation of the issue traffic rate, or in the alternative, it can assume, without any factual basis, that the issue traffic will escalate based on the BNSF Long Range Plan or the EIA. AEP Texas Reb. Nar. at III-A-71 to 73. BNSF has made it clear through its rate setting practice, however, that it intends to charge the rates set out in the Board's 1996 SAC calculations. There is no basis for assuming that BNSF intends to charge any rate for the issue traffic that is inconsistent with the 1996 SAC calculations.

III. SAC COST ISSUES

As in other cases, there are numerous disputes as to the proper calculation of SAC operating and construction costs. However, the Board has chosen in this case to limit final briefs to 25 pages. Given the complexity of the legal, traffic and economic issues in this case, it is not possible to address the SAC cost issues in detail here. Nevertheless, most of the issues have

where the plants obtain coal from various sources. Moreover, even if it were true that *deliveries* to the 13 plants did not decline, then AEP Texas should have applied an even greater rate of decline to the other plants in order to remain consistent with BNSF's overall projected decline in volume for the year. See Motion to Strike at 13, n.25.

arisen in recent cases so the analytical framework is familiar. In resolving these issues, the Board must be vigilant in holding complainants to their burden of proof.

As an initial matter, the Board must consider the relevance of real-world operating and construction cost data in evaluating the feasibility of AEP Texas' cost estimates. The *Guidelines* expressly state that a complainant's cost evidence must be verifiable and feasible. *Guidelines* at 543. A complainant cannot brush aside real-world cost evidence with the mere assertion that its SARR is a least cost, efficient alternative to the incumbent. Railroads have become highly efficient since the Staggers Act, and a SAC complainant should have to show with concrete and verifiable evidence that it could achieve efficiencies that real-world railroads have been unable to achieve notwithstanding their continuous efforts to improve their operations.

As to operating costs, BNSF showed that AEP Texas' assumptions produced operating costs that were totally out of line with real-world railroads. BNSF Reply Nar. at I-24. There is no basis for assuming cost savings of the magnitude posited by AEP Texas. As BNSF explained, a SARR carrying heavy tonnage coal traffic over high density lines could actually be expected to have operating costs that exceed the average operating costs of an efficient real-world multi-commodity railroad. Fuel consumption would be higher than average; MOW costs would be higher than average; there would be only limited savings available on crew and equipment costs.

As to construction costs, there is absolutely no real-world evidence that supports the level of costs posited by AEP Texas (or for that matter, the level of costs that the Board has found in recent SAC cases). This is an area where the Board has failed to give effect to the complainant's burden of proof. The Board has allowed complainants to put together cost estimates for massive SARR projects by combining numerous cherry picked estimates without ever requiring that the complainant show that the result bears any resemblance to a realistic cost estimate for a feasible

transportation provider. As BNSF explained, no real-world lender would ever base a financing decision on a cost estimate of the type posited by AEP Texas. BNSF Reply Exh. III.F-4. Apart from numerous flaws in cost assessments for individual cost items, AEP Texas substantially understated engineering and contingency costs for a project with the characteristics of the SARR. *Id.*; *see also* BNSF Reply Nar. at III.F-12.

A few specific operating and construction cost issues are addressed briefly below.

Locomotives: AEP Texas understates the SARR's locomotive requirements in two ways. First, AEP Texas tries to avoid responsibility for a locomotive fleet adequate to deal with peak period demands by assuming that the SARR could "acquire additional equipment on a short-term basis to meet their peak period needs." AEP Texas Reb. Nar. at III-C-14. AEP Texas waited until rebuttal to present any evidence supporting this assumption. Motion to Strike at 24-27. In any event, AEP Texas' assumption that locomotives would appear magically during peak periods that last as little as a day or two, and then disappear when the peaks return to normal, is an obvious fantasy that the Board should not indulge. To provide the same level of service as the incumbent, a SARR must have a fleet of locomotives available, on call, to meet the needs of frequent fluctuations in traffic volume of limited duration.

Second, AEP Texas used a flawed methodology to derive its locomotive requirements from the output of its RTC model. Complainants have used this methodology before, and BNSF has explained why it produces distorted equipment requirements. BNSF Reply Nar. at III.D-1 to 5. *See also* BNSF's Reply to Otter Tail's Supp. Evidence, Docket No. 42071 at III.C-4 to 10 (filed April 4, 2005). It is not necessary to extrapolate from the peak period operating results to determine locomotive requirements, since the number of locomotives needed to handle the traffic in each year can be directly assessed. BNSF Reply Nar. at III.C-3 to 4.

As to the lease rate on the SARR's locomotive fleet, AEP Texas understated costs by using payments from two early years in a single lease, while ignoring the fact that lease payments increased over the term of the lease. BNSF Reply Nar. at III.D-5; Exh. III.D-1. BNSF properly identified the present value (base year) of the lease payments using a forecast of equipment rents rather than a forecast of the RCAF-U. Since the RCAF-U is a composite index, use of the RCAF-U would have produced a present value of the lease payments based on a forecast of costs unrelated to equipment rents.¹⁰

Fuel: BNSF maintains data in the ordinary course of business on its fuel costs at specific fueling locations on the BNSF network. BNSF used these data to determine the cost of the SARR's fuel at Alliance and Amarillo. BNSF Reply Nar. at III.D-11 to 14 and Exh. III.D-2. On rebuttal, AEP Texas offers a new witness who makes the implausible claim that BNSF pays too much for fuel and that the SARR would do better. AEP Texas Reb. Nar. at III-D-14 to 20. The Board cannot accept AEP Texas' convoluted and speculative rebuttal evidence on this point. If BNSF could obtain better fuel prices by using different refineries and different fuel transportation options, it clearly would have done so by now.¹¹ Since BNSF already uses massive volumes of fuel at Alliance, there is no reason to believe that a further increase in demand would fundamentally change the supply characteristics.

As to fuel consumption rates, BNSF demonstrated that large, heavy unit coal trains consume fuel at a rate that is greater than system average. BNSF based its fuel consumption on

¹⁰ AEP Texas understates locomotive maintenance costs by assuming that newly acquired locomotives could somehow avoid costly overhauls. There is no basis for such an assumption.

¹¹ AEP Texas complains that BNSF did not undertake a burdensome special study in response to a workpaper request to generate the raw data used in BNSF's fuel cost database. AEP Texas Reb. Nar. at III-D-18. But BNSF provided the data as it is maintained by BNSF's Fuel Management Group. Those same data are used by BNSF to make management decisions, and there is no reason to believe they are incomplete or inaccurate.

the actual consumption rates calculated in fuel consumption tests conducted in *TMPA* and *Xcel*. BNSF Reply Nar. at III.D-14 to 17. Those studies, carried out with shipper input, have been accepted in prior SAC cases and they represent the best evidence of record on coal train fuel consumption in this case.

MOW: AEP Texas' MOW plan is virtually indistinguishable from MOW plans submitted in prior cases and rejected by the Board. Like other complainants, AEP Texas tries to avoid scrutiny of the actual MOW work associated with a heavy-haul unit coal train railroad through a variety of shell games and unsupported assumptions. Indeed, AEP Texas expressly states that it can ignore the effect of density on MOW costs on grounds that density only affects program maintenance and has no effect on day-to-day operating costs. AEP Texas Reb. Nar. at III-D-170. While it is certainly true that program maintenance costs increase with increases in density, operating MOW costs also increase with density. As density increases, it becomes increasingly important to react promptly to random outages and other unplanned maintenance requirements to avoid massive service failures. The idea that the same MOW workforce can adequately serve a railroad "whether the tonnage handled over the route is 30 MGT or 300 MGT per mile" is not worthy of serious consideration. *Id.*

AEP Texas' MOW costs are totally out of line with real-world experience. The Board cannot accept evidence, such as that sponsored by AEP Texas, that assumes MOW employee productivity that is more than 500 percent of that achieved by even the most efficient Class I railroad. BNSF Reply Nar. at I-28 to 29. BNSF's MOW evidence is the best evidence of record.

Land: The primary issue relating to SARR land costs involves the cost of land for the SARR's ROW through Denver. AEP Texas presented on opening no explanation of its methodology for assessing land acquisition costs in Denver and then on rebuttal offered support

for its original methodology and suggested new alternatives. Motion to Strike at 27-33. BNSF explained that AEP Texas' two principal approaches (lowest quartile and weighted average) resulted in an unrealistic estimate of land costs in an urban corridor because they gave too much weight to lower value land that is not representative of the land that the SARR would need for its urban right of way. BNSF's Denver land costs are the best evidence of record.

Earthwork Unit Costs: BNSF explained that AEP Texas understated earthworks costs by using unit costs from Means that are not appropriate for the type of work needed to construct the SARR ROW or by ignoring necessary activities altogether. For example, AEP Texas' solid rock excavation costs are understated because AEP Texas did not include any costs for the secondary handling of oversized boulders that are the byproduct of the initial blasting of solid rock. BNSF Reply Nar. at III.F-43 to 49. AEP Texas presented new evidence on rebuttal purporting to support its low solid rock excavation costs. BNSF explained in its Motion to Strike that the new evidence was highly misleading and that it failed completely to address the question whether secondary rock blasting is required. Motion to Strike at 33-36. AEP Texas has failed to demonstrate the feasibility of its assumption that the SARR can avoid secondary blasting costs.

Public Improvements: AEP Texas ignores the cost of public improvements in several areas. For example, AEP Texas seeks to avoid responsibility for fences by claiming that the variety of fence styles along the ROW indicates that BNSF did not pay for them. In fact, it only means that the landowners determined the type of fence to be installed during ROW negotiations. BNSF Reply Nar. at III.F-232. In addition, AEP Texas excludes the cost of all highway overpasses and at-grade crossings even though the ICC reports clearly indicate that some of these improvements were at least in part the responsibility of the incumbent. Finally, BNSF showed that AEP Texas' proposed asphalt/rubber at-grade crossings were inappropriate

for a high-density railroad and that the low initial costs for these crossings would be vastly outweighed by higher maintenance costs associated with their constant replacement. BNSF Reply Nar. at III.F-239 to 240.

IV. DISCOUNTED CASH FLOW MODEL ISSUES

Several issues relating to the Board's DCF model must be addressed in this case.

Updating the RCAF: BNSF showed in its Motion to Strike that under the guise of updating the RCAF values, AEP Texas modified on rebuttal its approach to forecasting the RCAF index for use in projecting SARR revenues. AEP Texas replaced certain projected RCAF values with historical values but then reverted back to an old, outdated Global Insights forecast for future period escalation. The result was an apples and oranges mix of actual and forecast index assumptions that dramatically overstated RCAF escalation relative to both the old and the new Global Insights forecasts. *See* Motion to Strike at Table 3. AEP Texas then used an inconsistent methodology to update its forecast of the RCAF for operating cost purposes, resulting in substantial *declines* in the index values. *Id.* at 11-12. AEP Texas admitted on reply to BNSF's Motion to Strike that its new methodology had produced anomalous results, but it merely adjusted the RCAF index used for operating expenses to incorporate the same flaws in the index used to forecast revenues.¹²

The Board should use AEP Texas' original forecast, which BNSF had accepted on reply, without updating the index values. Updating historical values without also updating the long range forecast, which takes recent changes into account, produces a forecast that is totally

¹² If AEP Texas was going to ignore the new Global Insights forecast, the better approach (although still flawed) would have been to revert back to the projected index values rather than the projected percent change assumptions from the old Global Insights forecast for *both* operating and revenue purposes. Motion to Strike at Exh. 1, p.11. The index values better reflect the assumption as to the future level of the RCAF in specific future time periods.

unreliable. If the Board does update the RCAF index for historical periods, it must use an updated Global Insights forecast.

Refinancing SARR Debt: AEP Texas claims that two years after the construction of the SARR, the SARR would repudiate its existing debt financing arrangements and obtain new, more favorable financing with no prepayment penalties and no refinancing costs. The new loan would be unprecedented. It would cover all of the outstanding debt of the SARR, it would be larger than any financing in recent history in the railroad industry, and it would have a term that is longer by far than most rail industry loans. The interest rate for this unprecedented refinancing, however, would be no different from the industry average. AEP Texas utterly failed to support these extraordinary claims with any expert testimony or hard evidence. BNSF Reply Nar. at III.G-1 to 3. Its opening evidence contains two sentences about the purported refinancing. AEP Texas Op. Nar. at III-G-5.

On rebuttal, AEP Texas tried to rehabilitate its unsupported assumption with new evidence identifying several rail industry debt financings in recent years that in the aggregate amounted to over \$14 billion. AEP Texas Reb. Exh. III-G-13. The new evidence, which constitutes improper rebuttal, raises more questions than it answers. Not a single one of the debt financings on the chart approaches the size of the refinancing that would be required here. No information is included about the context or objective of the financing or the relationship of the new financial instrument to any prior debt. The vast majority of the instruments have a short term, and there appears to be a definite relationship between the term of the debt and the interest rate. In short, AEP Texas' improper rebuttal evidence does not provide anything like the detailed evidence that would be needed to support a major departure from the Board's existing treatment of SARR debt, even if the Board were to accept that late-filed evidence.

Equity Financing Fee: On rebuttal, AEP Texas acknowledged that a substantial financing fee was paid in the only instance in recent history where a railroad raised equity capital. However, AEP Texas proposes an artifice to avoid having the SARR take responsibility for the fee. It urges the Board to spread the financing fee (incurred by the SARR) over the entire industry base, thus increasing the SARR's cost of capital by only an infinitesimal amount. This approach makes no sense. The SARR's cost of equity consists of two components: (1) the return it must offer to its investors, based on the return that the industry must offer to its investors, and (2) the amount the SARR must pay to advisors, consultants and bankers to raise the equity. The parties now are in basic agreement as to the size of that second component of the SARR's costs. The SARR is responsible for that fee, just as it is responsible for other construction costs.

Productivity Index: There are two fundamental problems with the EIA-based productivity index that AEP Texas urges the Board to apply in this case. First, the rate of productivity change in AEP Texas' EIA approach, like the EIA-based approach used by the complainant in *Xcel*, is based on the experience of existing, real-world railroads, and that experience does not say anything about the productivity that a SARR could expect. *See Xcel I* at 34. Second, even if the SARR can be expected to achieve productivity at some point in the future, it cannot possibly expect those productivity gains to be available immediately. A SARR is built using current state-of-the-art technology and operating practices. As BNSF demonstrated, AEP Texas' SARR starts out from day one with a 19 percent productivity improvement over BNSF. BNSF Reply Nar. at III.G-9 to 12.¹³ Even if productivity will

¹³ AEP Texas' revised calculation of the productivity improvement is an apples to oranges comparison of URCS variable costs to the SARR's full operating costs, and is therefore meaningless. AEP Texas Reb. Nar. III-G-17 to 19.

improve over the SARR's 20-year life, it would be inappropriate to assume any productivity gains for several years into the DCF period.¹⁴

BNSF did a careful review of each SARR operating cost category to determine the likelihood of future productivity gains. BNSF Reply Nar. at III.G-13 to 19. Based on this review, BNSF concluded that it would be reasonable to assume that the SARR would begin experiencing productivity gains in certain areas equivalent to those of real-world railroads about half-way through the DCF period. BNSF's evidence is the best evidence in the record.

V. RATE REDUCTION METHODOLOGY

In *Xcel*, the Board explained that the "rationale for applying the percentage reduction method [is] to preserve the rate structure for the traffic group by maintaining existing rate relationships, albeit at reduced levels, thereby implicitly preserving the carrier's demand-based differential pricing that recognizes the traffic's varying demand elasticities." *Xcel I* at 37. It concluded that use of the percent reduction methodology was appropriate in that case since "there [was] no reason to believe that the challenged rate was not set to reflect the demand elasticities of the Pawnee plant." *Xcel I* at 39.

The percent reduction method should be applied here because there is no risk that the challenged rates exceed a demand-based Ramsey price. The Board identified maximum reasonable rates in its 1996 calculations and BNSF has never charged a rate in excess of those maximum reasonable rates.

However, BNSF urges the Board to apply the percent reduction method by calculating the percentage by which rates must be reduced using the *through revenue* on cross-over

¹⁴ AEP Texas complains that there is a disconnect between the revenue and operating cost escalation assumptions. But that disconnect is supposed to exist because the SAC revenues are based on the incumbent's projected revenues while SAC costs are based on the SARR's costs.

movements, not the cross-over portion of the through revenue. BNSF Reply Nar. at III.G-29 to 34.¹⁵ The rationale for this approach is straightforward: When the Board concludes that a SARR handling cross-over traffic earns excessive revenues from its traffic group, the only logical assumption to make is that the supposed overcharge on the cross-over traffic reflects the *total amount* by which the incumbent “overcharges” the cross-over shippers. If additional “overcharges” would be available by building the SARR out to include the ultimate destinations, then the complainant would have built the larger SARR.¹⁶ In order to ensure that the rates charged by the incumbent on movements handled by the SARR in cross-over service are reduced only to the extent of the overcharge identified in the SAC analysis, the percentage reduction should be calculated based on the through revenues.¹⁷ Otherwise, revenues on cross-over

¹⁵ Through revenues are set out in BNSF Reply work papers “AEP Coal Move.xls,” Tab “Summary,” column “AD” and “BNSFgrft_BNSF Reply.xls,” Tab “2002,” column “B.” These through revenues can be forecast over the 20-year analysis period as described in note 4 above. If the Board does not calculate the percent reduction using through revenues, it should apply the traditional percent reduction approach.

¹⁶ The Board’s simplification rationale for the use of cross-over traffic cannot apply only to the extent it favors the complainant. If the complainant is entitled, due to simplification concerns, to ignore the possibility of off-SARR losses that would reduce or eliminate the contribution that cross-over traffic makes to the SARR, then it is also reasonable to assume that there are no additional “profits” on the off-SARR portion of the movement that the complainant would be able to capture if it built the off-SARR lines. The assumption implicit in the simplification rationale is that the off-SARR lines generate revenues that neither exceed nor fall short of the off-SARR costs.

¹⁷ This can be seen using the example presented by BNSF in Figure III.A-1, BNSF Reply Nar. at III.A-13, with one minor change. As in that example, assume that the issue traffic (which moves from O to D) is charged \$90 and the non-issue traffic (which moves from O to X) is charged \$60. Also, as in that example, assume that the SARR only consists of line segments O-A and A-D. Assume, as in the example, that \$30 of revenue from the non-issue traffic are allocated to the SARR. Now, to be consistent with the simplification rationale, assume that the costs of A-X are only \$30 (not \$50), so that the off-line revenues neither exceed nor fall short of off-line costs. The overcharge on the SARR is still \$20 (revenues equal \$90+\$30; costs equal \$50+\$50). What percent reduction should be applied to both movements to (1) preserve the existing rate structure and (2) reduce total revenues only by \$20? The proper percent reduction must be determined using the through revenue on the crossover traffic -- $20/(90+60)$ (13.33%) -- not the cross-over portion -- $20/(90+30)$ (16.66%). This can be easily demonstrated: 13.33% of

movements will be reduced too much, and the rate reduction will significantly change the existing rate.

AEP Texas proffers its Generalized Percentage Reduction Methodology (“GPRM”) as a means of addressing “the Gaming Problem.” AEP Texas Op. Nar. at III-G-31. (“[T]he [GPRM] method undoes what the attempt at gaming tries to accomplish.”) Since there is no conceivable basis for concluding that BNSF has attempted to game the SAC analysis in pricing the issue traffic, there is no reason, under AEP Texas’ own rationale for GPRM, to consider this convoluted approach. More important, however, the GPRM method is fatally flawed and inconsistent with the Ramsey pricing principles it purports to advance. BNSF Reply Nar. at III.G-34 to 41.

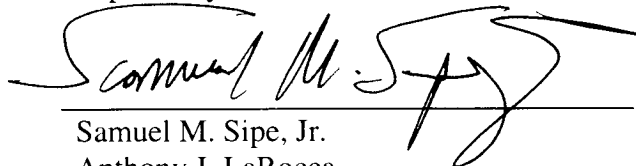
The first problem with GPRM is that it is based on the assumption that it is possible to calculate the relative demand elasticity of the shippers in a SARR shipper group. This glib assumption defies a basic premise of the *Coal Rate Guidelines* -- that demand elasticities of individual shippers (whether calculated on an absolute or a relative basis) cannot be determined without an enormous amount of data and complex analysis. If it were as easy to calculate demand elasticity as AEP Texas suggests, then why bother with the SAC test in the first place?

In addition, even if it were possible to calculate demand elasticities, the revenue-to-marginal cost relationships calculated by AEP Texas are meaningless because they look only at the cross-over portion of a movement. BNSF sets prices based on a through movement. But the revenue factors used in AEP Texas’ calculations are not *prices* for through service, but arbitrary allocations of through revenues. Those revenue factors could not possibly reflect demand because there is no shipper demand for a portion of a through movement.

\$90 is \$12; 13.33% of \$60 is \$8; \$12+\$8 is \$20. By contrast, use of a 16.66% would reduce the incumbent’s revenues by far too much: 16.66% of \$90 is \$15; 16.66% of \$60 is \$10.

Finally, the procedure used by AEP Texas to implement GPRM violates basic Ramsey pricing principles. As BNSF explained, AEP Texas ranked shippers according to the supposed revenue-to-marginal cost ratio and then used an iterative process, starting with the movement purported to have the most inelastic demand, to reduce revenues to the point where SARR revenues equaled SAC costs. BNSF Reply Nar. at III.G-40 to 41. The result was that all shippers whose revenues were reduced ended up with an identical revenue-to-marginal cost ratio. This result is clearly inconsistent with Ramsey pricing, since AEP Texas itself assumed that these shippers started out with different demand elasticities and therefore they should have different revenue-to-marginal cost ratios after applying the rate reduction. In addition, this procedure produced a group of shippers (those below the iteration cut-off point) that had no reduction at all made to their revenues, even though true Ramsey pricing would have resulted in some reduction to the revenue contribution of every movement. Ultimately, GPRM fails because it does not maintain the mark-up differentials among the SARR shippers that Ramsey pricing principles would require for shippers with different elasticities of demand.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Samuel M. Sipe, Jr.", written over a horizontal line.

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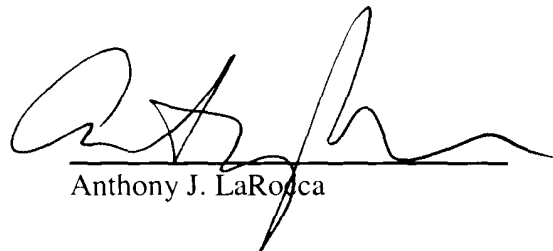
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CERTIFICATE OF SERVICE

I hereby certify that this 9th day of June, 2005, I served a copy of the foregoing Final Brief of BNSF Railway Company to the following by hand delivery:

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